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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,786	03/13/2001	Ronald Samuel Blackhurst	3522 P 003	2836

26967 7590 12/06/2001

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EXAMINER

SORKIN, DAVID L

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 12/06/2001

3

Please find below and/or attached an Office communication concerning this application or proceeding.

99

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/805,786	BLACKHURST, RONALD SAMUEL	
	Examiner	Art Unit	
	David L. Sorkin	1723	

-- Th MAILING DATE of this communication app ars on the cover sh t with th correspond nc address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 March 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☒ Certified copies of the priority documents have been received in Application No. 09/294,215.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> . | 6) <input type="checkbox"/> Other:  |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities:
2. On page 1, line 8, after "09/294,215", ", now U.S. Pat. No. 6,220,744," should be inserted.
3. On page 2, line 25, "piece" should read - - pieces - -.
4. On page 4, line 24, "FIG. 4" apparently should read - - FIG. 5 - -.
5. On page 5, line 3, "barrel 12" should read - - barrel 13 - -.
6. On page 5, line 4, "barrel 12" should read - - barrel 13 - -.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
8. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
9. Regarding claim 1, because "a rotary mixing barrel" is recited twice, in line 2 and line 4, subsequent references to "the barrel" are indefinite.
10. Regarding claim 1, there is lack of antecedent basis for "the frame".
11. Claim 3 is rendered indefinite by the phrase "is used to power rotary lawn mowers". According to the specification, engines which are typically used to power lawn mowers are considered suitable for the instant invention. However, the purpose of

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an apparatus claim is to set forth a particular scope of structures, which is the invention (see MPEP 2114). The limitation "is used to power rotary lawn mowers" only confuses what scope of structures is being claimed. Clearly, a given individual engine is not going to be "used to power rotary lawn mowers" while it is being used to power the mixer which is the invention. Apparent, applicant is referring to an engine being 'of the type' which are "used to power rotary lawn mowers". However, it is unreasonable for one to consider all the engines which ever have been used to power rotary lawn mowers in order to determine the scope of instant claim 3. What if someone five years from now uses a new type of engine in a rotary lawn mower, would the scope of claim 3 then become broader? What if a type of engine could be used in a rotary lawn mower, but never has been? How different can an engine be from one which has been used in a lawn mower and still be within the scope of claim 3?

12. Likewise, claim 4 is rendered indefinite by the phrase "is for an engine used to power rotary lawn mowers".

13. Likewise, claim 5 is rendered indefinite by the phrase "is used to power washing machines".

### ***Claim Rejections - 35 USC § 102***

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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15. Claims 1 and 3-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Moser et al. (US 4,197,015). Regarding claim 1, Moser ('015) discloses a barrel mixer comprising, a rotary mixer barrel (11); a support (10) for the rotary mixing barrel, the support including a tipping arrangement for the barrel, wherein the support limits tipping of the barrel between a mixing position in which the barrel is angled so as to retain its contents and a tipping position in which the barrel is angled so that its contents are poured out, the support further including wheels (26,27) disposed proximate a bottom portion of the support; a motor (51) having an output shaft (52) aligned parallel to an axis of rotation of the barrel, a transmission mounted on the support for rotating the barrel, the transmission including step-down gearing between the motor and the barrel (see col. 6, lines 4-47), the motor and gearing tipping with the barrel when the support is moved between the mixing position and the pouring position, wherein the motor and transmission are disposed on the same side of the support (see fig. 2); wherein the support comprises a resting surface (surface of 28 and 29) extending on the motor and transmission side of the frame such that when the mixer is in the mixing position the mixer rests upon the resting surface and a foot (19a,19b) extends beyond the wheels of the mixer such that when the mixer is in the pouring position the mixer rests upon the foot. Claim 3 fails to further structurally limit the claimed apparatus (see MPEP 2114). Regarding claim 4, the motor is electric (see col. 5, line 68). Claim 5 fails to further structurally limit the claimed apparatus (see MPEP 2114). Regarding claim 6, the barrel is demountable from the support breaks down (see fig. 7).

***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moser et al. (US 4,197,015) in view of Cunningham (US 4,060,225). The mixer of Moser ('015) was discussed above with regard to claim 1. The mixer of Moser ('015) differs from that which is claimed because it has an electric motor rather than an internal combustion engine. Cunningham ('225) teaches that internal combustion engines are an alternative to electric motors in mixers (see col. 4, lines 22-24). It is considered that it would have been obvious to one of ordinary skill in the art to have used an internal combustion engine instead of an electric motor in view of the teaches of Cunningham ('225), for example to provide power in an undeveloped location where electricity may not be readily available.

***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Halsted (US 5,492,401) also teaches that both electric and internal combustion engines are suitable for rotating mixers (see col. 6, lines 13-18).

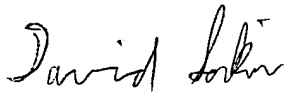
Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-

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1121. The examiner can normally be reached on 7:30 - 5:00 Mon.-Thur., Alternate Fridays.

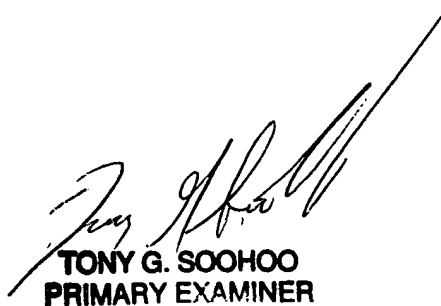
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin

November 27, 2001



**TONY G. SOOHOO**  
**PRIMARY EXAMINER**